the business of the plaintiffs and O.R.M. The $5,000 with interest was repaid to him by June, 1943.

It should be made clear that there is no suggestion of any misappropriation or dishonesty on the part of Annamalai or O.R.M. If the loan was not in law discharged it will be advantageous to the plaintiffs to recover the amount of it in these proceedings.

On the facts and documents as stated their Lordships agree with the trial Judge that it was the duty of the defendants to repay this money to the plaintiffs or to an agent of that firm with authority to receive the money on their behalf. Was Annamalai such an agent?

The appellants rely on the fact that the plaintiffs had until his death their own attorney, Arunasalam. He and he alone could draw on their banking account and as they say receive money and sign a receipt. On the other hand the authority of Annamalai to invest the charity fund involved authority to demand cheques on the plaintiffs' banking account as and when required. That he had such authority and that Arunasalam carried out his instructions is clear from the evidence. The proposition contended for is that the agent authorised to part with the firms' money on loan to A. B or C had no authority to receive repayment on their behalf. Their Lordships cannot accept this. In their opinion the authority to invest on loan necessarily implies in the circumstances of this case authority to receive repayment.

No doubt if and when Arunasalam was in the office he would as attorney ordinarily sign documents that required signature on behalf of the plaintiffs. Suppose before the war he had been ill or on a holiday at a time when principal or interest on a loan made under Annamalai's authority was tendered for repayment to Annamalai. It would seem to their Lordships somewhat absurd to suggest that he would have had to tell the borrower to wait till Arunasalam had recovered if the borrower wanted a discharge. If Annamalai would have had such authority before the war it was not suggested that the position would have been different after Arunasalam's death.

The plaintiffs called no evidence as to the position at the relevant dates. If a copy of the letter to which we have referred existed it was not produced. One has to proceed on the contents of that letter as deposed to by Annamalai. Annamalai signed the endorsement on the Thavannai letter when the loan was repaid, "Agent of O.R.M. for T.AR.CT." This wording was relied on by the appellants in the argument as to ostensible authority. On the view their Lordships take of his actual authority it follows precisely the authority given by the letter. It was as agent of O.R.M. that he was authorised to make loans out of the charity fund and it would therefore be as such agent that he would be authorised to receive their repayment "for" the plaintiffs.

It is unnecessary in these circumstances to consider whether if there had not been actual authority the defendants could establish ostensible authority. There was no dispute between the parties as to the applicable law and no useful purpose would be served by considering how that law would have been applied if the facts had been other than their Lordships find them to be.

Their Lordships are of opinion that the conclusion of the Court of Appeal is right and they will humbly advise Her Majesty that this appeal ought to be dismissed. The appellants will pay the costs of the respondents.

Appeal dismissed.

Solicitors: *Lawrence Messer & Co.; Shelton Cobb & Co.*

LOKE THAM CHUAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) February 11, 1954]

[Ipoh — Criminal Appeal No. 138 of 1953]

Dangerous Drugs Ordinance, 1952, s. 30(2) and (7) — Meaning of "owner" — Meaning of "possession."

This was an appeal against the forfeiture of a motor car under s. 30(2) of the Dangerous Drugs Ordinance. One Ong Hock Thye had pleaded guilty to a charge of possession of opium. The facts showed that the opium was concealed in a compartment which had been constructed under the rear seat of the car. The car was registered in the name of the appellant and the insurance policy was also in his name. The car had been lent by the appellant to Ong Hock Thye on the understanding that he was to return the car at the end of 14 days if he was not able to dispose of it. After the conviction of Ong Hock Thye proceedings were taken with regard to the disposal of the car and the appellant was given opportunity of showing cause why the vehicle should not be forfeited. The learned President at the hearing held that Ong Hock Thye was the owner of the motor car for the purpose of s. 30(2) of the Dangerous Drugs Ordinance and ordered that the car be forfeited to Government. On appeal it was argued that the learned President was wrong in his interpretation of s. 30(2) and (7) of the Dangerous Drugs Ordinance.

Held: (1) on the facts the relationship between the appellant and Ong Hock Thye was that of a gratuitous bailment revocable at the will of the bailor and therefore the appellant who was the bailor had the right to immediate possession of the motor car; (2) as the appellant has the right to possess the car he was the person entitled to possession and therefore the owner of the motor car for the purpose of s. 30 of the Dangerous Drugs Ordinance; (3) as there was evidence to show that the offence was committed by Ong Hock Thye without the knowledge, consent or connivance of the appellant the provision of

s. 30(2) of the Dangerous Drugs Ordinance applied and the car should not have been forfeited.

[Editorial Note: Section 30(2) & (7) of the Federation Dangerous Drugs Ordinance, 1952, are similar to those of s. 30(2) & (7) of the Dangerous Drugs Ordinance, 1951, of Singapore.]

Cases referred to:—

(1) *Rex v. Liew Kow Teong* (1938) M.L.J. 215.

(2) *R. v. Ashwell* (1885), 16 Q.B.D. 190, 201.

(3) *United States of America & Republic of France v. Dollfus Mieg et Cie. S.A. & Bank of England* (1952) A.C. 582.

MAGISTRATE'S CRIMINAL APPEAL.

Eusoffe Abdoolcader for the appellant.

I. Talog Davies (Federal Counsel) for the respondent.

Buhagiar J.: —At the Sessions Court, Taiping, one Ong Hock Thye and another were charged with being in possession of a quantity of raw opium, an offence under section 6 of the Dangerous Drugs Ordinance, 1952. He pleaded guilty without reservation and the case against the other person was withdrawn. The opium was concealed in a compartment which had been constructed under the rear seat of a car, a Sunbeam Talbot, S. 8352; the car is registered in the name of Loke Tham Chuan; the insurance policy is also in his name. After the conviction of Ong Hock Thye proceedings were taken with regard to the disposal of the car, and Loke Tham Chuan was given opportunity of showing cause why the vehicle should not be forfeited. The learned President held that Ong Hock Thye was the 'owner' for the purposes of section 30(2) of the Dangerous Drugs Ordinance and ordered that the car be forfeited to Government.

Loke Tham Chuan appealed from this order; the main ground of appeal is that "the learned President misdirected himself on the construction of section 30(7) of the said (Dangerous Drugs) Ordinance and on the meaning of "possession" therein.

At the end of the hearing, I allowed the appeal and set aside the order of the learned President — reasons for allowing the appeal were to be given in writing later.

The facts as stated in the grounds of judgment of the learned President are as follows:—

"Loke Tham Chuan was examined on solemn affirmation: he is a motor repairer and also buys and sells car, and he deposed:—

(a) that he bought S. 8352 for resale,

(b) that accused Ong Hock Thye told him that there was a prospective purchaser for the car, and so he would like to take it for 14 days' trial,

(c) this was about October 1st.

In cross-examination, Loke Tham Chuan said that he had lent the car to Ong Hock Thye who was the only person entitled to possession on 11.10.53 — the date of his arrest: and agreed that Ong Hock Thye was, at the end of 14 days, to return the car to him *if he had not been able to dispose of it* in the meantime.

In re-examination, the witness said he could have recalled it before the expiry of the 14 days. It is clear that he did not exercise that power.

It would therefore appear from Loke Tham Chuan that accused Ong Hock Thye was his agent for a specific period of time for the purpose of selling his car to a prospective purchaser.

There is, however, a notable and considerable discrepancy between his statement in this respect and that of Ong Hock Thye: for the latter's version is that he told the registered owner that he himself wanted to buy the car and hence wanted to try it out for a few days. If this is accepted there was no question of agency of sale on behalf of the registered owner.

It was admitted by accused Ong Hock Thye

(a) that he made the structural alterations in the back seat of the car,

(b) that he kept it at his own house at 260(c) Perak Road, Penang,

(c) that he paid for the oil and petrol used,

(d) that he used it for 10 days round about Penang, and that no one else used it,

(e) that after a week's trial he found it to be in good mechanical condition,

(f) that he did not return it to the registered owner, nor intimate to him that he wished to purchase it "because he was too busy",

(g) that the reason he was not himself driving on 11.10.53 when the car was stopped at Simpang, Taiping, a considerable distance from Penang was that his arm was swollen and he had a pain in his chest."

Sub-section (2) of section 30 of the Dangerous Drugs Ordinance, 1952, provides as follows:—

"(2) Where any dangerous drug, in respect of which an offence under this Ordinance . . . . . has been committed, is found in any conveyance, such conveyance may be seized by any officer of customs or police officer and, ... shall be forfeited, unless it is proved to the satisfaction of the Court, that the offence . . . . had been . . . . committed without the knowledge, consent or connivance of the owner."

Under sub-section (7) of that section "owner of a conveyance means the person entitled to the possession of the same immediately before seizure."

In dealing with the interpretation of "possession" the learned President went on to say as follows:—

"'Possession' is not defined in the Dangerous Drugs Ordinance nor in the Penal Code in relation to 'possession' as used in s. 379. *Ratanlal's Law of Crimes*, 14th Edition, in dealing with 'possession' appearing in s. 379 states . . . . . 'The authors of the Code remark 'We believe it impossible to mark with precision, by any words the circumstances which constitute possession'. Ratanlal also quotes from *Stephen's Digest of Criminal Law* Art. 306 to the following effect 'A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to do so in case of need'.

"*Wharton's Law Lexicon*, 14th Edition at page 777 describes possession as 'The state of owning, or having a thing in one's own hands or power': and specifies four

different kinds of possession the last being 'naked possession' that is, 'mere possession, without colour of right' .... The primary meaning is 'physical control' ".

He then referred to *Rex v. Liew Kow Teong*[1] which contains a definition of — "possession" extracted from *Byrne's Legal Dictionary*, page 680, in which the aspect of physical control is brought out strongly.

Having dealt with the interpretation of "possession" the learned President concluded as follows:—

"Having regard to the above descriptions of 'possession' I felt no doubt that the person entitled to possession of the Sunbeam Talbot car immediately before its seizure was Ong Hock Thye, who therefore must be considered as the 'notional' owner for the purposes of s. 30(2) and (7) of the Dangerous Drugs Ordinance: he had exclusive custody of the car: he had exclusive use of it: he undertook structural alterations to it: he took it for a long journey and for an illegal purpose: he could have terminated the registered owner's 'proprietas' at any time from 1/10 to 11/10 by selling it to someone else — (if in fact he was acting as an agent for sale) or by buying it himself. In whatever capacity he had custody of the car from 1/10 onwards he was a bailee in possession and if the car had been stolen from his house at night it would certainly have been stolen from his possession. Accordingly I ordered forfeiture of the car as the offence under s. 6 of Dangerous Drugs Ordinance had certainly been committed with the knowledge of the 'notional' owner."

"Possession" is a word of ambiguous meaning and its legal senses do not coincide with the popular sense. (In common speech a man is said to possess or to be in possession of anything of which he has the *apparent* control, or from the use of which he has the *apparent* power of excluding others). "Possession", "right of possession", "legal possession", "possession in law", "right to possession", "constructive possession", "physical possession" are phrases occurring in reports and in books and some of them are often used interchangeably, and careful attention must in every case be paid to the context. It is, I think, misleading to look for an interpretation of "possession" in definitions given generally to that word or by reference to the criminal law. The question of possession for purposes of criminal law is approached in a method different from that in questions of civil liability. Thus, for purposes of civil law, the decided cases, upon the whole, support the principle that knowledge is not essential to possession, while in criminal matters "a man has not possession of that of the existence of which he is unaware," (*per* Cave J., in *R. v. Ashwell*[2]). And to quote the example given in *Winfield Textbook of the Law of Tort*, 3rd Edition at page 305:—

"Take the case of Benjamin into whose sack of corn Joseph inserted a cup without Benjamin's knowledge; or the case of the bishop into whose coat pocket a thief, without the bishop's knowledge, inserted a purse in order to escape detection. So far as the law of tort is concerned it is an intelligible and sensible proposition to say that Benjamin and the bishop have got legal possession of the cup and the purse respectively and the right to retain them as against any one except their true owners; and that is probably what the law is. If it were otherwise, any one could take the articles from the unwitting possessor with impunity. But so far as criminal law is concerned, no one in his senses would say that Benjamin or the bishop has "taken possession" of the goods while ignorant of their presence and had thus committed larceny."

Again, for several reasons which are set out in *Pollock & Wright on Possession* at pages 108 — 114, the law protects not only possession which originated lawfully but also, up to a certain point, a thoroughly vicious possession: a thief who steals a watch from X has a possession which the law will protect against every one except X or some person acting lawfully on X's behalf.

The meaning of the word "possession" in subsection (7) of section 30 must, in my opinion, be considered from the aspect of civil law.

Now, mere possession, that is physical control or detention, as it is called in Continental writings, or the *corpus* in Roman Law, without any *animus*, is a matter of fact; it merely indicates an actual relation between a person and a thing. When such fact is accompanied by *animus*, we have a definite legal relation of the possession to the thing possessed and the person holding a thing has the state of being a possessor in the eye of the law. In this sense "possession" is generally stated to be of two kinds, that is, "possession in fact" and "possession in law"; the former has not the same degree of legal protection as has the latter. "Possession in fact" has been defined by *Terry — Principles of Anglo American Law* (1888), page 268 (cited with approval in *Pollock & Wright — Possession in the Common Law* (1888), page 13) as "any power to use (the thing) and exclude others, however small, will suffice, if accompanied by the *animus possidendi*, provided that no one else has the *animus possidendi* and an equal or greater power." Possession in fact may be with or without rightful origin. A common example of "possession in fact" or *de facto* possession is a domestic servant with respect to his employer's plate and cutlery. Merely physical possession, as such, involves no rights, but this is subject to an important qualification, as "it is one of the most general and long-settled rules of law that a person who is in apparent possession has all the rights remedies and immunities of a possessor as against strangers. He cannot be disturbed except by another person who is able to show a present right to the possession. More than this, he has as against a mere stranger and wrongdoer the same remedies as if he had the right to the possession, and he can as against the stranger maintain trover or detinue as well as trespass or theft, and in general the stranger who violates his possession cannot justify the violation by showing that the possession was without title, or even by showing that it was wrongful, unless

he further shows not only that a third person was entitled to the possession but that he the stranger acted with the authority of the third person. If however a mere actual possession of a thing acquired wrongfully or existing without right is once lawfully divested, and the thing comes lawfully into the possession of another person, the former possessor cannot recover it from him, for wherever a plaintiff has to rely on right to possession as distinguished from actual possession he must prove his right or the defendant may disprove it." *Pollock & Wright, op. cit.* pp. 147 — 148.

For possession in law there must be according to *Pollock & Wright, op. cit.* p. 17, "a manifest intent, not merely to exclude the world at large from interfering with the thing in question, but to do so on one's own account and in one's own name." Whether this intent exists or not must generally be a question of fact, but in at least two legal relations the law has settled that it does not — that is the servant and the bailee at will.

An owner of goods enjoying the full rights of ownership has physical possession and possession in law; the right to have physical possession and possession in law is a normal but not necessary incident of ownership. Ownership may exist with or apart from physical possession or possession in law. An owner may voluntarily part with possession, for example by bailment for a definite time or by a lease of land for a term of years; the right to possess during such periods is in the possessor — the bailee or lessee respectively. An owner may also voluntarily part with the physical possession retaining to himself the right to recall the goods at any time or he may be deprived of his property involuntarily, for example by theft or loss. In such cases the right to possess remains with the owner. "Right to possess" when separated from physical possession is often called "constructive possession."

Applying these principles to sub-section (7) of section 30 of the Dangerous Drugs Ordinance, 1952, the proper interpretation to be given to the words "is entitled to the possession" is, in my opinion, "has the right to possess." According to this interpretation a person who buys a car on the hire purchase system has, as long as the terms of the agreement are complied with, the right to possess the car; so also has a person who hires a car for a period of time for the purpose of using it as a taxi or a pawnee or a bailee for a definite period of time.

The object of the said sub-section is similar in scope to the definition of "owner" contained in section 121 of the Road Traffic Act of the United Kingdom where "owner" is defined as follows:—

> " 'Owner', in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement."

In the present case the appellant delivered the car on or about the 1st October, 1953, to Ong Hock Thye. The car was delivered at the request of Ong Hock Thye for a specific purpose. According to the appellant Ong Hock Thye had told him that there was a prospective buyer of the car while according to Ong Hock Thye he had an idea of buying the car himself and wanted to try it out. Ong Hock Thye was to have the car for fourteen days. The appellant stated that although during this period the car was to be used by Ong Hock Thye he had the right to recall the car at any time. Ong Hock Thye stated that after a few days he found the car satisfactory but he never mentioned this to the appellant. There is no evidence that there was any mention of the price for which the car was to be sold either to the prospective purchaser or to Ong Hock Thye.

The relationship between the appellant and Ong Hock Thye was, in my opinion that of a gratuitous bailment revocable at the will of the bailor. It is not necessary to decide whether the fact that Ong Hock Thye, the bailee, made use of the car for an illegal purpose, that is the transport of opium, which was different from that for which it was delivered to him (that is to find a prospective purchaser or for a trial run) to determine the bailment. It is settled law that in the case of a bailment at will the bailor has the right to immediate possession and it is by reason of that right that he can exercise those possessory remedies which are available to the possessor — see *United States of America and Republic of France v. Dollfus Mieg et Cie. S.A. and Bank of England*[3] at pp. 605 and 611 *per* Earl Jowitt and Lord Porter respectively.

I held, therefore, that the appellant was the "owner" of the car for the purposes of section 30 of the Dangerous Drugs Ordinance, 1952, and as there was evidence to show that the offence under that Ordinance was committed by Ong Hock Thye without the knowledge, consent or connivance of the appellant, the provisions of sub-section (2) of that section applied.

Appeal allowed.

Solicitors for the appellant: *Ong Huck Lim & Co.*